

CITY OF VICTORVILLE

VICTORVILLE MUNICIPAL UTILITY SERVICES (VMUS)

REQUEST FOR PROPOSALS (RFP)



RFP# CC17-099 QUALIFIED ELECTRICAL ENGINEER

SUBMITTAL DUE DATE & TIME:

WEDNESDAY, MAY 31, 2017 @ 2:00 P.M.

**CITY OF VICTORVILLE
VICTORVILLE MUNICIPAL UTILITY SERVICES (VMUS)
CC17-099 QUALIFIED ELECTRICAL ENGINEER**

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**CITY OF VICTORVILLE
VICTORVILLE MUNICIPAL UTILITY SERVICES (VMUS)
CC17-099 QUALIFIED ELECTRICAL ENGINEER**

**SECTION I
SCOPE OF SERVICES**

The selected electrical engineer(s) shall provide technical consulting services to the City of Victorville for the existing Victorville Municipal Utility Services (VMUS) medium voltage distribution facilities located at both the Foxborough Industrial Park (Foxborough) and the Southern California Logistics Airport (SCLA). Contractor shall also provide advisory and design services that include interconnect and substation design to help utility plan for growth. Consulting services shall include, but are not limited to, the timely and efficient performance of the following services:

- 1) Overhead electrical design
- 2) Overhead to underground electrical design
- 3) Underground electrical design
- 4) Electrical system capacity and reinforcement design
- 5) Substation getaway design
- 6) Electrical load analysis pertaining to the electrical systems and/or individual customers
- 7) Consultation with staff pertaining to material and equipment selection and purchase
- 8) Consultation with operations staff pertaining to safety, means and methods of operation, system improvement, regulatory compliance, etc.
- 9) Electrical facility field verification and/or inspection
- 10) Various Engineering studies pertaining to the electrical systems
- 11) Technical responses to RFI's (Request for Information) from contractors and vendors
- 12) Consultation on and review of VMUS rates, Rules and Regulations, and any anticipated changes occurring from the green energy policies/options.
- 13) Plan Check services of designs performed by other electrical engineers to ensure conformance with the VMUS design standards.
- 14) Electrical Master Planning

QUALIFICATIONS AND EXPERIENCE OF PROJECT TEAM

The Consultant shall designate a project team comprised of experienced professionals and technical staff to competently and efficiently perform the work with either the Consultant's own personnel and/or sub-consultant(s). The prime consultant and sub-consultant(s) shall provide information on their business, applicable certificates of recognition, and other pertinent information that demonstrates their qualifications to perform the work under this RFQ. The proposal shall include only references to similar projects serving performed by the Consultant and sub-consultants.

METHOD AND CRITERIA FOR SELECTION

A consultant selection committee, with a minimum of three members, will be appointed at the beginning of the consultant selection process. The committee will review each written proposal submitted by consultants to determine if they meet the requirements of this RFQ. Failure to meet the essential requirements for this RFQ may be cause for rejection of the proposal. The committee will make independent random checks of the consultant's references as well as major sub-consultants.

Consultant shall be selected on the basis of demonstrated competence and professional qualifications to provide the requested services. Consultants that are considered as equally-

qualified, cost can be considered as a decisive factor. The selection committee will rank the responding consultants' proposals and will develop a list of the top three (3) consultants. At the conclusion of the ranking process, the sealed fee proposal for the top three ranked consultants will be opened. Subsequently, the City will enter into negotiation with the top-ranked consultant, with the goal of agreeing on a final contract that will deliver to the City the services and/or products required at a reasonable and fair compensation. If a fair and reasonable compensation cannot be negotiated with the top-ranked consultant, a new negotiation will be started with the next highest-ranked consultant. If this new negotiation fails, the process will be repeated until a contract is negotiated successfully.

The City may exercise the **option** of inviting the three top ranking consulting firms for a one-hour interview/presentation. The team representing the consulting firm in the interview/presentation must consist of those individuals who will be directly involved in the project. In that case, the final selection of a consultant will be based on the interview/presentation.

DELIVERABLES

Submit 1 original and 3 printed sets of proposal. There is no maximum number of pages, but *please be concise* (consideration will not be given for bulk). **Submit one (1) cost proposal in a separate sealed envelope**, using the *Cost Proposal Form* as included on Section 3 Forms.

METHOD AND CRITERIA FOR SELECTION

A consultant selection committee, with a minimum of three members, will be appointed at the beginning of the consultant selection process. The committee will review each written proposal submitted by consultants to determine if they meet the requirements of this RFP. Failure to meet the essential requirements for this RFP may be cause for rejection of the proposal. The committee will make independent random checks of the consultant's references as well as major sub-consultants. The following criteria will be used to rank consultants:

MAXIMUM POINTS	CRITERIA
20	Completeness and accuracy of proposal
15	Qualifications and Experience of Team Leader
	Staff experience with similar kinds of work.
15	Stated ability to accommodate the City's needs, on time and within budget.
1	Reference check with regard to consultant's history of performing Quality work
10	Reference check with regard to consultant's history of providing cost effective performance
10	Reference check with regard to consultant's history of providing responsive and timely service
100	TOTAL

**CITY OF VICTORVILLE
VICTORVILLE MUNICIPAL UTILITY SERVICES (VMUS)
CC17-099 QUALIFIED ELECTRICAL ENGINEER**

**SECTION II
CONTRACT TERMS AND CONDITIONS**

1. AWARD OF CONTRACT

- a. The City reserves the right to accept or reject any and all proposals and to award a contract to the consultant who best meets its requirements. Relevant factors which shall be considered in evaluating the bids are: completeness and accuracy of proposal, past experiences with the City with the consultant or references from other cities, developers, or municipalities regarding past work done by the consultant, ability to complete the job in the specified time with the specified quality of workmanship.
- b. The City further reserves the right to award the contract to other than the lowest Consultant if such action is deemed to be in the best interest of the City of Victorville.

2. CONTRACT EXECUTION

The successful Consultant shall execute a Contract with The City for the services to be provided. A sample contract is provided as attached at the end of this RFQ.

3. SAFETY, SANITARY, AND MEDICAL REQUIREMENTS

The Consultant, Consultant's employees, shall promptly and fully carry out the existing safety, sanitary, and medical requirements as prescribed by the Division of Industrial Safety and by County or State Health Departments to the end that proper work shall be done, and the safety and health of the employees and of the community may be conserved and safeguarded. In case such regulations and orders are not observed by the Consultant, they may be enforced by the City Manager at the Consultant's expense.

4. Insurance

Consultant's are required to provide with their proposal, certificates of insurance verifying coverage, as well as a letter from the Consultant's insurance agent or corporate Risk Management Department acknowledging that the Consultant is able to comply with all insurance requirements. It is highly recommended that Consultant confer with their respective insurance carriers or brokers to determine in advance of proposal submittal, the availability of insurance certificates and endorsements as prescribed herein.

During the term of this Contract, the Consultant shall maintain at Consultant's sole expense, the following insurance.

1. Minimum Scope of Insurance:
 - a. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall be at least as broad as Insurance Services Office form number GL 00 02 (Ed. 1/73) covering Comprehensive General Liability and Insurance Services Office form number GL 04 04 03 81 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage, "occurrence" form CG 00 01 11 85. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location,

endorsement CG 25 03 11 85 or CG 25 04 11 85, or the general aggregate limit shall be twice the required occurrence limit.

- b. Professional Liability and errors and omissions insurance policy providing a prudent amount of coverage for the willful or negligent acts, or omissions of any officers, employees or agents in conjunction with the services to be provided. Coverage limits shall be \$1,000,000 or more, per occurrence without reduction for claims paid during the policy period. The carrier should be duly insured and authorized to issue similar insurance policies for this nature in the State of California.
- c. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall be at least as broad as Insurance Services Office form number CA 00 01 01 87, covering Automobile Liability, code 1 "any auto" and endorsement CA 00 25 (Ed. 01 86).
- d. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and employers Liability limits of \$1,000,000 per accident.

2. Deductibles and Self-Insured Retention:

Any deductibles or self-insured retention must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the city, its officers, officials, employees and volunteers; or the Auditor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

3. Other Insurance Provisions: The policies are to contain, or be endorsed to contain, the following provisions:

- 1. The City, its officers, officials, employees, agents and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant.

The coverage shall contain no special limitations on the scope of protection afforded to the city, its officers, officials, employees, agents or volunteers.

- 2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- 3. Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.

4. The Consultant's insurance shall apply separately to each insured against whom a claim is made or suite is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days prior written notice, by certified mail return receipt requested, has been given to the city.
6. Professional Liability Insurance or Errors and Omissions insurance as appropriate to Consultant's profession shall be required and written on a policy form specifically designed to provide coverage for and protect against the negligent acts, errors and omissions of the Consultant in the performance of the services required by this Agreement. A minimum limit of \$1,000,000 per claim and in the aggregate must be provided.

5. Withdrawal of Proposal Before Closing

Any Consultant may request the withdrawal of their submitted proposal, by written request, at any time **prior** to the scheduled closing date and time. Upon receiving the written request to withdraw any proposal, the City will consider the Consultant's proposal null and void, and return the proposal to the Consultant unopened. Withdrawal of Consultant's proposal will not prejudice Consultant's re-submittal for this or any future proposal(s).

6. Mistakes in Proposal

Any Consultant may withdraw their proposal after the proposal opening, subject to the time restrictions indicated below, **only** if the Consultant can establish to the City satisfaction, that a mistake was made in preparing the proposal.

1. A Consultant declaring a mistake must provide a written notice to the City within five (5) calendar days following the scheduled closing date, specifying in detail how the mistake occurred, and how the mistake made the proposal materially different than it was intended.
2. Withdrawal of the proposal will **only** be permitted for mistakes made in the completion of the proposal. A Consultant who claims a mistake shall be **prohibited** from submitting further proposals on the Project on which the mistake was claimed. (*Public Contract Code 5105*).

7. Proposal Labeling

The proposal shall be submitted in a sealed envelope with all original pages intact. Proposal envelopes must be plainly marked and submitted as follows:

"CC17-099 SEALED PROPOSAL FOR: QUALIFIED ELECTRICAL ENGINEER"
and the Cost Proposal pages 13-14 shall be on a separate envelope clearly marked **"COST PROPOSAL "**

8. Submittal Location, Closing Date and Time

To be considered, proposals must be received by the Purchasing Section of the City of Victorville, at 14343 Civic Drive, Victorville, CA 92392 on **WEDNESDAY, MAY 31, 2017, at 2:00 p.m.**, in the Finance Division of the Administrative Services Department in City Hall.

9. Written Questions and Answers

Any proposal received prior to the date and time specified for the receipt of proposals maybe withdrawn or modified by written request questions. All written questions shall be directed via mail, fax, or email to:

- Address: City of Victorville
Admin Svcs Dept./Purchasing Section
14343 Civic Drive
Victorville, CA 92392-2399
- FAX: (760) 269-0045
- Email: cmcalderon@victorvilleca.gov
- Attention: Celeste Calderon, Finance Specialist
- Phone#: (760) 955-5082

In order for all competing Consultants to receive the same information, no response shall be given to verbal questions submitted by telephone or in person. Personal and/or telephonic contact with the City staff in regard to this RFP is prohibited. The City may reject the proposal of such Consultant.

Answers to all relevant questions will be addressed in addenda if deemed necessary.

10. Proposal Acceptance

The City reserves the right to accept or reject any and all proposals and waive any irregularities or informalities in any proposals or in the proposal process. The City of Victorville further reserves the right to award the contract to other than the lowest Consultant if such action is deemed to be in the best interest of the City.

11. Interpretation of Documents

During the proposal solicitation period, should a Consultant find discrepancies or omissions in any part of the RFQ, or should the Consultant be in doubt as to their interpretation, the Consultant shall immediately notify the contact indicated in Section 9, entitled "Written Questions and Answers". Should it be found necessary, an addendum will be sent to all Consultants. Any addenda issued prior to the scheduled proposal closing date and time, shall form a part of this solicitation and shall become a part of the submitted proposal.

12. Award of Contract

The award of the contract, if awarded, will be made within forty-five (45) days after opening of the Proposals. The Consultant's signature on the Cost Proposal form shall constitute a commitment on the part of the proposer to perform the work in a workmanship manner as set forth in the Proposal Form, the Terms and Conditions, and the Request for. The Consultant to whom the contract is awarded shall be notified upon approval of the contract by the Purchasing Section of the Administrative Services Department. The Proposal Form, the Terms and Conditions, the Request for Proposal, and the Scope of Services, together with any plans and/or attachments, shall all be considered as part of the contract between the City and the Consultant to whom a Purchase Order is issued.

13. Public Record

Be advised that **all** information contained in proposals submitted in response to this solicitation **shall** become a matter of public record upon contract award, and be made available upon request, unless otherwise marked. The Consultant must identify, in writing, all copyrighted material, trade secrets or other proprietary information the Consultant claims are exempt from disclosure pursuant to the California Public Records Act. The Consultant who claims such an exemption must also state in the proposal that, "The Consultant agrees to indemnify and hold harmless the City, and its officers, employees and agents from any claims, liability or damages against the city and to defend any actions brought against the City for its refusal to disclose such material, trade secrets or other proprietary information to any party."

14. Acceptance and Payment

Consultant's invoice(s) shall include reference to the Purchase Order number issued for the services, and be accompanied by detailed supporting documentation, to include information on services rendered. The City shall pay the Consultant's properly executed invoice, subject to approval by the City Manager or his designee, within thirty (30) days following receipt of the invoice. Total payment for all work shall not exceed the sum of the estimated cost of all completed phases plus the partial payments for partially completed phases. Payment will be withheld for any services which do not meet or exceed City's requirements or have proven unacceptable until such services are replaced, resubmitted and accepted by the City.

15. Federal, State and Local Laws

The Consultant and all subconsultant shall comply with all applicable federal, state, local laws, rules, and regulations.

16. Drug-Free Workplace Requirements

The Consultant shall comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Sections 8350 et seq.).

17. Americans with Disabilities

The Consultant shall comply with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101 et seq.) which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

18. Conflict of Interest

No member, officer, or employee of the City or of a local public body during his tenure or for one (1) year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

Furthermore, the parties hereto covenant and agree that to their knowledge no board member, officer or employee of the City has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the contracting party other than the City, and that if any such interest comes to the knowledge of either party at any time, a full and complete disclosure of such information will be made in writing to the other party or parties, even if such interest would not be considered a conflict of interest under Article 4 (commencing with Section 1090) or Article 4.6 (commencing with Section 1120) of Division 4 of Title I of the Government Code of the State of California.

19. **Disputes**

Any controversy or claim arising out of or relating to the provisions of this Agreement or the breach thereof shall be settled by arbitration, in accordance with the Rules of the American Arbitration Association, unless the parties agree, in writing, to some other form of alternative dispute resolution.

20. **Non-Collusion Affidavit**

All bids must be accompanied by a signed and notarized Non-Collusion Affidavit per the Public Contract Code Section 7106.

21. **License**

The awarded Consultant shall obtain a **City of Victorville business license** prior to commencing work for the City.

22. **Termination for Convenience**

The City, may, by written notice, terminate this contract in whole or in part, when deemed in the City's interest. Upon termination of this contract, the City shall only be liable for payment under the payment provisions of this contract for services rendered or supplies furnished prior to the effective date of termination.

23. **Termination for Default**

The City, may, by written notice of default to the Consultant, terminate this contract in whole or in part if the Consultant fails to:

1. Deliver or to perform the services within the time specified in this contract or any extension; or
2. Make progress, so as to endanger performance of this contract; or
3. Perform any of the other provisions of this contract.

24. **ENTIRE AGREEMENT**

This contract, including any attachments hereto, constitutes the sole and only agreement between the parties. It correctly sets forth the obligations of the parties to each other in respect to any such matters as of this date. Any agreements, discussions, statements, or representations of any kind between the parties respecting any such matters, not expressly set forth, in this agreement are null and void.

25. **INDEMNIFICATION**

Notwithstanding the limits of any insurance, Consultant shall indemnify the Southern California Logistics Airport (SCLA), Victor Valley Economic Development Authority (VVEDA), its officials, officers, agents, volunteers and employees against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising or alleged to arise out of or in connection with the negligent performance of the work, operations or activities of Consultant, its agents, employees, subconsultants, or invitees, provided for herein, or arising or alleged to arise from the negligent acts or omissions of Consultant hereunder, or arising or alleged to arise from Consultant's negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, but excluding such claims or liabilities or portion of such claims

or liabilities arising or alleged to arise from the negligence or willful misconduct of The SCLA, VVEDA its officials, officers, agents, volunteers or employees, and in connection therewith:

- (a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and wSCLA, VVEDA will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;
- (b) Consultant will promptly pay any judgment rendered against SCLA, VVEDA, its officials, officers, agents or employees for any such claims or liabilities arising or alleged to arise out of or in connection with Consultant's (or its agents', employees', subcontractors' or invitees') negligent performance of or failure to perform such work, operations or activities hereunder; and Consultant agrees to save and hold SCLA, VVEDA, its officials, volunteers, officers, agents, and employees harmless therefrom;
- (c) In the event SCLA, VVEDA, its officials, officers, agents, volunteers or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising or alleged to arise out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant shall pay the SCLA, VVEDA, its officials, volunteers officers, agents or employees, any and all costs and expenses incurred by the SCLA, VVEDA, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees for counsel acceptable to SCLA and VVEDA.
- (d) Consultant's duty to defend and indemnify as set out in this Section shall include any claims, liabilities, obligations, losses, demands, actions, penalties, suits, costs, expenses or damages or injury to persons or property arising or alleged to arise from, in connection with, as a consequence of or pursuant to any state or federal law or regulation regarding hazardous substances, including but not limited to the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), Resource Conservation and Recovery Act of 1976 ("RCRA"), the Hazardous and Solid Waste Amendments of 1984, the Hazardous Material Transportation Act, the Toxic Substances control Act, the Clean Air Act, the Clean Water Act, the California Hazardous Substance Account Act, the California Hazardous Waste Control Law or the Porter-Cologne Water Quality Control Act, as any of those statutes may be amended from time to time.

The Consultant's indemnification obligations pursuant to this Section shall survive the termination of this Agreement. Consultant shall require the same indemnification from all sub-consultants.

**CITY OF VICTORVILLE
VICTORVILLE MUNICIPAL UTILITY SERVICES (VMUS)
CC17-099 QUALIFIED ELECTRICAL ENGINEER**

**SECTION III
SUBMISSION CERTIFICATION**

I hereby submit to The City of Victorville the following bid proposal for work outlined in plans and specifications entitled “**CC17-099 Qualified Electrical Engineer**”

All of the following documents (check below) are completed, fully executed, and included in my proposal as required in the RFP document:

- _____ Submission Certification
- _____ Cost Proposal Form
- _____ Proposer Identification
- _____ Worker’s Compensation Certificate
- _____ Non-Collusion Affidavit **(must be notarized)**
- _____ Customer References
- _____ Debarred Certification Acknowledgement
- _____ Exception Form

My signature on this Submittal Certification is affirmation that all items listed above are fully completed and executed and are hereby submitted with the proposal as required. I understand that failure to complete and/or submit any of the required documents may be cause for rejection of my proposal.

_____ Business Name

_____ Authorized Signature Printed Name and Title

_____ Date Signed Telephone Number

**CITY OF VICTORVILLE
VICTORVILLE MUNICIPAL UTILITY SERVICES (VMUS)
CC17-099 QUALIFIED ELECTRICAL ENGINEER**

COST PROPOSAL FORM

The undersigned declares he has carefully examined the locations of the proposed work, the Scope of Services, and Contract Documents; and being familiar with all of the conditions surrounding the work. All of the aforementioned shall be done in accordance with said Scope of Services and all applicable addenda .

DESIGN PLANS -

[Staff] _____. \$_____ per hour

[Staff] _____. \$_____ per hour

[Staff] _____. \$_____ per hour

[Staff] _____. \$_____ per hour

DRAFT TECHNICAL SPECIFICATIONS -

[Staff] _____. \$_____ per hour

[Staff] _____. \$_____ per hour

[Staff] _____. \$_____ per hour

[Staff] _____. \$_____ per hour

MEETINGS -

[Staff] _____. \$_____ per hour

[Staff] _____. \$_____ per hour

[Staff] _____. \$_____ per hour

[Staff] _____. \$_____ per hour

ENGINEERING SUPPORT (DURING BID & CONSTRUCTION) -

[Staff] _____. \$_____ per hour

[Staff] _____. \$_____ per hour

[Staff] _____. \$_____ per hour

[Staff] _____. \$_____ per hour

[Staff] _____. \$_____ per hour

. All rates submitted must be all-inclusive and final. The City will not pay any separate costs for travel, lodging, per diem, printing, shipping, etc.

Consultant's Name: _____

Company Name: _____

Phone: _____ Fax: _____ Email: _____

Name: _____

Signature	Title	Date
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NOTE: COST PROPOSAL SHEETS (PAGE 13-14) NEEDS TO BE SUBMITTED SEPARATELY IN A SEALED ENVELOPE CLEARLY IDENTIFIED AS "SEALED DOLLAR COST FOR QUALIFIED ELECTRICAL ENGINEER"

**CITY OF VICTORVILLE
VICTORVILLE MUNICIPAL UTILITY SERVICES (VMUS)
CC17-099 QUALIFIED ELECTRICAL ENGINEER**

PROPOSER IDENTIFICATION

1. Legal name of Proposer: _____
2. Street Address: _____
3. Mailing Address: _____
4. Business Telephone: _____
5. Facsimile Telephone: _____
6. Email Address: _____
7. Type of Business:
☐ Sole Proprietor ☐ Partnership ☐ Corporation Other: _____
If corporation, indicate State where incorporated: _____
8. Business License number issued by The City where the Proposer's principal place of business is located.
Number: _____ Issuing City: _____
9. Contractors License number and expiration date.
Number: _____ Expiration date: _____
10. Federal Tax Identification Number: _____
11. Proposer's Project Manager: _____

**CITY OF VICTORVILLE
VICTORVILLE MUNICIPAL UTILITY SERVICES (VMUS)
CC17-099 QUALIFIED ELECTRICAL ENGINEER**

WORKERS' COMPENSATION CERTIFICATE

The Proposer shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and on behalf of my firm, I will comply with such provisions before commencing the performance of the services of any contract entered into.

_____ Signature	_____ Company Name
_____ Printed Name	_____ Business License Number
_____ Title	_____ Date

NON-COLLUSION AFFIDAVIT
TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

**CITY OF VICTORVILLE
VICTORVILLE MUNICIPAL UTILITY SERVICES (VMUS)
CC17-099 QUALIFIED ELECTRICAL ENGINEER**

CUSTOMER REFERENCES

Proposer: _____

LIST THREE AGENCIES YOU HAVE DONE BUSINESS WITH WITHIN THE LAST FIVE YEARS WITH SIMILAR SCOPE OF SERVICES		
1.	Name of Agency	
	Address	
	Contact Person Name:	
	Contact Person Phone:	
	Email Address	
2.	Name of Agency	
	Address	
	Contact Person Name:	
	Contact Person Phone:	
	Email Address	
3.	Name of Agency	
	Address	
	Contact Person Name:	
	Contact Person Phone:	
	Email Address	

**CITY OF VICTORVILLE
VICTORVILLE MUNICIPAL UTILITY SERVICES (VMUS)
CC17-099 QUALIFIED ELECTRICAL ENGINEER**

DEBARRED CERTIFICATION ACKNOWLEDGEMENT

(a)(1) The Offeror/Bidder certifies, to the best of its knowledge and belief, that—

(i) The Offeror/Bidder and/or any of its Principals—

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have not, within a three-year period preceding this solicitation, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of bids; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision;

(ii) The Offeror/Bidder has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principal," for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a division or business segment; and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror/Bidder shall provide immediate written notice to the City if, at any time prior to contract award, the Offeror/Bidder learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's/Bidder's responsibility. Failure of the Offeror/Bidder to furnish a certification or provide such additional information as requested by the SCLAA may render the Offeror/Bidder nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror/Bidder is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror/Bidder

knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate the contract resulting from this solicitation for default.

The Offeror/Bidder certifies that the foregoing is true and correct:

Offeror/Bidder:_____Federal I.D. No:_____

Address:_____

Phone:_____Fax:_____Email:_____

Signature:_____Date:_____

**CITY OF VICTORVILLE
VICTORVILLE MUNICIPAL UTILITY SERVICES (VMUS)
CC17-099 QUALIFIED ELECTRICAL ENGINEER**

EXCEPTION FORM

Should Proposer take exception to **ANY** of the terms and conditions or other contents provided in the RFB for Professional Auditing Services, list the exceptions below. **THIS COMPLETED FORM MUST BE RETURNED WITH YOUR PROPOSAL.** If no exception(s) are taken, enter "**NONE**" for the first item. *(Make additional copies of this form as necessary)*

Page Number: _____ Section Title: _____

Paragraph Number: _____ Exception Taken: _____

Page Number: _____ Section Title: _____

Paragraph Number: _____ Exception Taken: _____

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Paragraph Number: _____ Exception Taken: _____

**ATTACHMENT “A”
SAMPLE
CONSULTANT PROFESSIONAL
AGREEMENT**

**CONSULTANT/PROFESSIONAL SERVICES PROVIDER AGREEMENT
BY AND BETWEEN
THE CITY OF VICTORVILLE
AND
CONSULTANT
FOR
TITLE OF PROJECT AND PROJECT NUMBER**

THIS CONSULTANT/PROFESSIONAL SERVICES PROVIDER AGREEMENT (hereinafter "Agreement"), is made and entered into by and between THE CITY OF VICTORVILLE, a municipal corporation located in the County of San Bernardino, State of California, hereinafter referred to as the "City", and [CONSULTANT], [STATE FORM OF BUSINESS], hereinafter referred to as "Consultant." City and Consultant are sometimes hereinafter referred to individually as a "Party" and collectively referred to as the "Parties."

RECITALS:

WHEREAS, the City requires [DESCRIBE CONSULTANT PROFESSIONAL SERVICES] for [DESCRIBE PROJECT] and;

WHEREAS, Consultant represents that it is fully qualified to perform the consulting and/or professional services required for performance under this Agreement by virtue of its experience and the training, education and expertise of its principals and its employees, and;

WHEREAS, in light of the facts set forth above, the City desires to retain the services of a qualified Consultant to provide, on an independent contractor basis, [DESCRIBE SERVICES]

NOW THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS, AND PROMISES CONTAINED HEREIN AND FOR SUCH OTHER GOOD AND VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. RECITALS

The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference, as though set forth fully herein.

Section 2. PROPOSAL

Consultant shall provide to the City those services set forth in the Proposal, attached hereto as Exhibit "A", and incorporated as part of this Agreement by this reference.

Section 3. COMPENSATION

The City shall pay to Consultant a sum not to exceed [AMOUNT IN WORDS] AND 00/100 DOLLARS (\$000,000.00) for faithful performance of the services to be rendered under this Agreement, subject to the Fee Schedule provisions of Section 4, below. No expense reimbursements, including, but not limited to, reimbursements for travel, parking, lodging, and/or meals shall be paid to Consultant unless such expense reimbursements: (i) are specifically provided for and described by nature and type in Exhibit "B", below; (ii) appear on Consultant's monthly invoices to City; (iii) are supported by the appropriate receipts and other such documentation as the City shall require; and (iv) are directly related to the Scope of Services to be performed under this Agreement. In addition, any and all reimbursements shall be made in accordance with any City policy governing same.

Section 4. FEE SCHEDULE

The City shall pay Consultant as provided in the Fee Schedule, attached hereto as Exhibit "B", and incorporated as part of this Agreement by this reference. The provisions of Exhibit "B" notwithstanding, in order to receive payments, Consultant shall be required to submit to the City detailed monthly invoices which include, if applicable, a description of all services/tasks performed, the number of hours expended on each service/task, the name of the person performing the service/task, and expense reimbursement information, if any, as required by Section 3, above. Provided that services have been satisfactorily rendered, invoices shall be paid by the City approximately thirty (30) working days following receipt of Consultant's invoice.

Section 5.

RESERVED

Section 6.

TERM OF AGREEMENT

This Agreement shall be for an Initial Term of [NUMBER OF MONTHS] commencing on (COMMENCEMENT DATE) (the "Commencement Date") and expiring on (TERMINATION DATE) (the "Termination Date") (the "Term"), unless terminated earlier pursuant to Section 21 of this Agreement. From and after the Termination Date, and upon subsequent agreement by the Parties, this Agreement may continue on a month-to-month basis until terminated pursuant to Section 21 below.

[IF NO OPTION PERIODS -- DELETE THIS SECTION FROM THE AGREEMENT IN ITS

ENTIRETY]-- This Agreement may be extended for **ONE (1)** additional one-year period (hereinafter "Option Period"), at the option of City, subject to satisfactory performance as determined by the City. City shall give Consultant sixty (60) days advance written notice prior to the expiration the initial Term and sixty (60) days advance written notice prior to the expiration date of each subsequently exercised Option Period, if any, should the City decide to exercise its option(s) to extend. In the event City does not give Consultant such written notice of its option to extend, this Agreement shall terminate at the end of the then-current Term or Option Period without further notice from either Party, unless terminated earlier pursuant to the provisions of Section 21 below. Should the City fail to give Consultant the sixty (60) days written notice of its intention to exercise any Option Period, the City may, in its sole discretion, elect to exercise any Option Period at a later date, following written inquiry from Consultant.

Section 7.

INDEPENDENT CONTRACTOR STATUS

It is the express intention of the Parties that Consultant is an independent contractor and not an employee, agent, joint venturer, or partner of the City. Nothing in this agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the City and Consultant or any employee or agent of Consultant. Both Parties acknowledge that Consultant is not an employee for state or federal tax purposes or any other purpose. Consultant shall retain the right to perform services for others during the term of this agreement.

Section 8.

**REPRESENTATIONS AND ACKNOWLEDGMENTS REGARDING
INDEPENDENT CONTRACTOR'S STATUS OF CONSULTANT**

a. Consultant represents and acknowledges the following:

(1) The City is not required to provide any training or legal counsel to Consultant or its employees in order for Consultant to perform the services described in this Agreement.

(2) Performance of the services described in this Agreement does not have to be integrated into the daily business operations of the City.

(3) The services described in this Agreement can be performed without the use of City equipment, materials, tools, or facilities, unless otherwise provided under a separate agreement.

(4) Nothing in this Agreement shall be interpreted to imply that the City must maintain any contractual relationship with Consultant on a continuing basis after termination of this Agreement.

(5) The City will not be requested or demanded to assume any liability for the direct payment of any salary, wage, or other such compensation to any person employed by Consultant to perform the services described in this Agreement.

(6) Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are employees of the City.

b. The City represents and acknowledges the following:

(1) Consultant is solely responsible for determining who, under the supervision or direction of Consultant, will perform the services set forth in this Agreement.

(2) The City will not hire, supervise, or pay any employees or assistants working for Consultant pursuant to this Agreement. Nothing contained in this Agreement shall prevent the City from hiring Consultant's employees or assistants after termination of this Agreement.

(3) Nothing in this Agreement shall be interpreted to imply that Consultant must maintain any contractual relationship with the City on a continuing basis after termination of this Agreement.

(4) It is the sole responsibility of Consultant to set the hours in which Consultant performs or plans to perform the services set forth in this Agreement.

(5) Consultant is not required to devote full time to the business operations of the City in order to perform the services set forth in this Agreement.

(6) Unless deemed necessary under certain circumstances, Consultant is not required to perform the services set forth in this Agreement at City Hall or on City-owned property.

(7) Other than attendance at required public meetings and public hearings, and complying with the provisions of the Fee Schedule set forth in Exhibit B and any procedural requirements set forth by law, Consultant is not required to perform the services set forth in this Agreement in any particular order or sequence.

(8) Nothing in this Agreement shall be interpreted to preclude Consultant from working for other persons or firms, provided that such work does not create a conflict of interest.

Section 9. NOT AGENT OF THE CITY

a. Nothing contained in this Agreement shall be deemed, construed, or represented by the City or Consultant or by any third person to create the relationship of principal and agent.

b. Consultant shall have no authority, express or implied, to act on behalf of the City in any capacity whatsoever as an agent, nor shall Consultant have any authority, express or implied, to bind the City to any obligation whatsoever.

Section 10. LICENSES AND PERMITS

Consultant represents that it has obtained and will maintain at all times during the Initial Term (and during the Option Period, if applicable) of this Agreement all business licenses, including but not limited to a City of Victorville business license, professional licenses or certifications, or permits necessary for performing the services described in this Agreement.

Section 11. STANDARD OF PERFORMANCE; WARRANTY

a. Consultant agrees to perform all services required by this Agreement in a professional and competent manner, in accordance with the degree of skill and diligence which is normally employed by reputable professionals performing similar services under similar conditions in the same or similar locality. Such services shall also be performed in a manner which is reasonably satisfactory to [INSERT DEPT. HEAD NAME AND TITLE], or his designee.

- b. By executing this Agreement, Consultant warrants that it:
- (1) Has thoroughly investigated and considered the services and work to be performed;
 - (2) Has investigated the issues regarding the scope of services to be provided;
 - (3) Has carefully considered how the services and related work should be performed; and
 - (4) Fully understands the facilities, difficulties and restrictions associated with performance of the services required by this Agreement.

Section 12. **FAMILIARITY WITH WORK**

Should Consultant discover any latent or unknown conditions materially differing from those inherent in the services or as represented by the City, Consultant shall immediately inform the City of such fact and shall not provide any services, except at Consultant's risk, until written instructions are received from [INSERT DEPT. HEAD NAME AND TITLE], or his designee.

Section 13. **CONFLICTS OF INTEREST**

Consultant covenants that it does not have any interest, nor shall it acquire any interest, directly or indirectly, which would conflict in any manner with the performance of Consultant's services under this Agreement. Consultant further covenants that in the performance of services under this Agreement, no officer, employee or agent of Consultant having such interest shall be employed by it. In the event the City determines that Consultant must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests, Consultant shall file such Form 700 with the City Clerk's Office pursuant to the written instructions provided by the City Clerk. Acquisition or maintenance of a conflicting interest by Consultant may result in termination of this Agreement by the City.

Section 14. **COMPLIANCE WITH LAWS**

Consultant shall comply with all local, state, and federal laws and regulations applicable to the services to be rendered hereunder, including any rule, regulation, or bylaw governing the conduct or performance of Consultant or its employees, officers, or board members.

Section 15. **COMMERCIAL GENERAL AND AUTOMOBILE LIABILITY INSURANCE**

a. Consultant shall procure and maintain at its own expense, during the Initial Term of this Agreement (and during the Option Period, if applicable), Commercial General Liability Insurance, of not less than One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate, for bodily injury, personal injury, death, loss, or damage resulting from the wrongful or negligent acts by Consultant or its officers, employees, servants, volunteers, and agents and independent contractors.

b. Consultant shall further procure and maintain, at its own expense, during the Initial Term of this Agreement, (and during the Option Period, if applicable), Commercial Vehicle Liability Insurance covering personal injury and property damage, of not less than One Million Dollars (\$1,000,000) combined single limit, covering any vehicle utilized by Consultant or its officers, employees, servants, volunteers, agents and independent contractors in performing the services required by this Agreement.

Section 16. **WORKERS' COMPENSATION INSURANCE**

a. Consultant shall procure and maintain at its own expense, during the Initial Term of this Agreement (and during the Option Period, if applicable), Workers' Compensation Insurance, providing coverage as required by the California State Workers' Compensation Law.

b. If any class of employees employed by the Consultant pursuant to this Agreement is not protected by the California State Workers' Compensation Law, Consultant shall provide adequate insurance for the protection of such employees to the satisfaction of the City.

Section 17. PROFESSIONAL LIABILITY INSURANCE

Professional Liability Insurance or Errors and Omissions insurance as appropriate to Consultant's profession shall be required and written on a policy form specifically designed to provide coverage for and protect against the negligent acts, errors and omissions of the Consultant in the performance of the services required by this Agreement. A minimum limit of \$1,000,000 per claim and in the aggregate must be provided.

Section 18. ADDITIONAL INSURED

Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, all insurance policies, except for the Workers' Compensation and Professional Liability, shall be endorsed to name the City and its officers, employees, servants, volunteers, agents and independent contractors, including, without limitation, the City Attorney, as Additional Insureds.

Section 19. WAIVER OF SUBROGATION RIGHTS

Consultant shall require the carriers of all required insurance policies, with exception to Professional Liability, to waive all rights of subrogation against the City and its officers, employees, servants, volunteers, agents, and independent contractors and subcontractors. Each policy of insurance shall be endorsed to reflect such waiver.

Section 20. PROOF OF INSURANCE COVERAGE; REQUIRED ENDORSEMENTS

a. Consultant shall secure from a good and responsible company or companies authorized to transact insurance business in the State of California, the policies of insurance required by this Agreement and furnish to the City Clerk certificates of insurance evidencing the required coverage, and policy endorsements at least one (1) business day prior to the commencement of any services to be performed under this Agreement.

b. The policies and certificates of insurance shall be endorsed to provide that in the event of cancellation or amendment of any required insurance policy for any reason whatsoever, the City shall be notified by mail, postage prepaid, not less than thirty (30) days before the cancellation or amendment is effective. In the case of cancellation for non-payment, ten (10) days advance written notice shall be given.

c. Each policy and certificate of insurance shall be endorsed to provide that the policy shall not be terminated or expire without first providing thirty (30) days written notice to the City of such termination or expiration.

d. Each policy and certificate of insurance shall be endorsed to provide that the policy will be maintained throughout the Initial Term (and during the Option Period, if applicable), of this Agreement.

e. The Commercial General Liability and Vehicle Liability policies shall be endorsed to contain the following provision: "For any claims related to this Agreement, Consultant's coverage shall be primary with respect to the City. Any insurance maintained by the City shall be in excess of Consultant's insurance and shall not contribute with it."

Section 21. TERMINATION OR SUSPENSION

a. This Agreement may be terminated or suspended without cause by either Party at any time, provided that the Party initiating the termination provides the other Party at least thirty (30) days advance written notice of such termination or suspension. In the event of such termination, the City shall only be liable for payment under the payment provisions of this Agreement for satisfactory services rendered or supplies actually furnished prior to the effective date of termination.

b. This Agreement may be terminated or suspended with cause by either Party at any time, provided that the Party initiating termination provides the other Party at least ten (10) days advance written notice of such termination or suspension. In the event of such termination, the City shall only be liable for payment under the payment provisions of this Agreement for satisfactory services rendered or supplies actually furnished prior to the effective date of termination.

Section 22. TIME OF THE ESSENCE

Time is of the essence in the performance of this Agreement.

Section 23. INDEMNIFICATION

a. Consultant shall defend, indemnify, and hold harmless the City, its officers, employees, representatives, and agents, from and against those actions, suits, proceedings, claims, demands, losses, costs, and expenses, including legal costs and attorneys fees, for any personal injuries, deaths, or property damage (including property owned by the City), which may arise out of Consultant's negligence or willful misconduct in the performance of the services described in this Agreement, unless such losses or damages are proven to be caused by the City's own negligence or willful misconduct, or that of its officers or employees.

b. The City does not and shall not waive any rights that it may have against Consultant under this Section, because of the acceptance by the City, or the deposit with the City, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless and indemnification provisions of this Section shall apply regardless of whether said insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost, or expense described herein.

Section 24. REPORTS

Upon request by **[INSERT DEPT. HEAD NAME AND TITLE]**, or his designee, or as otherwise required by this Agreement, including but not limited to, the Scope of Services set forth in Exhibit "A", Consultant shall prepare and submit reports to the City concerning Consultant's performance of the services required by this Agreement.

Section 25. RECORDS

a. Consultant shall keep such books and records as shall be necessary to perform the services required by this Agreement and enable **[INSERT DEPT. HEAD NAME AND TITLE]**, or his designee, to evaluate the cost and the performance of such services.

b. Books and records pertaining to costs shall be kept and prepared in accordance with generally accepted accounting principles.

c. **[INSERT DEPT. HEAD NAME AND TITLE]**, or his designee, shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

d. Records and supporting documents pertaining to the use of funds paid to Consultant hereunder shall be retained by Consultant and made available to **[INSERT DEPT. HEAD NAME AND TITLE]**, or his designee, for purposes of performing an audit for a period of five (5) years from the date of termination of this Agreement.

Section 26. RESERVED

Section 27.**CONFIDENTIALITY; OWNERSHIP OF WORK**

- a. Any and all documents and information obtained from the City or prepared by Consultant for the City shall be kept strictly confidential unless otherwise provided by applicable law. All City data, documents and information shall be returned to the City upon termination of the Agreement.
- b. Any drawings, specifications, reports, records, documents, or other materials prepared by Consultant in the performance of services under this Agreement shall not be released publicly without the prior written approval of to **[INSERT DEPT. HEAD NAME AND TITLE]**, or his designee, or as required by applicable law.
- c. Consultant shall not disclose to any other entity or person any information regarding the activities of the City, except with the prior written approval of **[INSERT DEPT. HEAD NAME AND TITLE]**, or his designee, or as required by applicable law.
- d. All original documents, reports, designs, computer files and all other materials prepared by Consultant in the course of performing the services pursuant to this Agreement, whether completed or in progress, are the property of the City and shall be surrendered to the City upon the completion of Consultant's services or when requested by **[INSERT DEPT. HEAD NAME AND TITLE]**, or his designee. Such materials may be used, reused or otherwise disposed of by the City without the permission of Consultant.
- e. Consultant's covenants under this Section 28 shall survive the termination of this Agreement.

Section 28.**PRINCIPAL REPRESENTATIVES**

- a. **[SERVICE REPRESENTATIVE]**, is designated as the principal representative of Consultant for purposes of communicating with the City on any matter associated with the performance of the services set forth in this Agreement.
- b. **[INSERT DEPT. HEAD NAME AND TITLE]**, or his designee, shall be the principal representative of the City for purposes of communicating with Consultant on any matter associated with the performance of the services set forth in this Agreement.
- c. Either Party may designate another individual as its principal representative by giving written notice of such designation to the other Party.

Section 29.**MODIFICATIONS AND AMENDMENTS; EXTRA SERVICES**

- a. This Agreement may be modified or amended only by a written instrument signed by both Parties.
- b. During the Initial Term, the City may request that the Consultant perform Extra Services. As used herein, "Extra Services" means any services, which are determined by the City to be necessary for the proper completion of **[TITLE OF PROJECT]** but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. A written instrument signed by both Parties shall be required to authorize performance of and payment for Extra Services.

Section 30.**ENTIRE AGREEMENT**

- a. This Agreement supersedes any and all prior or contemporaneous agreements, either oral or written, between the City and Consultant with respect to the subject matter of this Agreement.

c. No agreement, statement, or promise with respect to the subject matter of this Agreement, which is not contained in this Agreement, or in a valid modification or amendment to this Agreement, shall be valid or binding on either Party.

This Agreement is in all respects intended by each Party hereto to be deemed and construed to have been jointly prepared by the Parties and the Parties hereby expressly agree that any uncertainty or ambiguity existing herein shall not be interpreted against either of them. Except as expressly limited by this paragraph, all of the applicable rules of interpretation of contract shall govern the interpretation of any uncertainty or ambiguity of this Agreement.

Section 32. NOTICES

To the City: **[DEPT. HEAD]
(REQUESTING) DEPARTMENT
City of Victorville
14343 Civic Drive
Victorville, CA 92392**

Section 33. **NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES**

Section 34. REVIEW BY ATTORNEYS

Section 35. WAIVER

- a. No waiver shall be binding unless executed in writing by the Party making the waiver.
- b. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision.
- c. Failure of either Party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of such provision or any of the remaining provisions of this Agreement.

Section 36. **ASSIGNMENT**

This Agreement shall not be assigned by either Party without prior written consent of the other Party.

Section 37. **CARE OF WORK**

The performance of services by Consultant or the payment of money by the City shall not relieve Consultant from any obligation to correct any incomplete, inaccurate, or defective work at no further cost to the City, when such incomplete, inaccurate or defective work is due to the negligence of Consultant.

Section 38. **CAPTIONS AND HEADINGS**

The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

Section 39. **SUCCESSORS, HEIRS, AND ASSIGNS**

Except as otherwise expressly provided herein, this Agreement shall be binding upon the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties to this Agreement and, likewise, shall inure to the benefit of the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties.

Section 40. **GENDER**

In this Agreement, unless the context clearly requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall include one another.

Section 41. **SEVERABILITY**

If any one or more of the sentences, clauses, paragraphs, or sections contained herein is declared invalid, void, or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair, or invalidate any of the remaining sentences, clauses, paragraphs, or sections contained herein.

Section 42. **GOVERNING LAW**

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties under this Agreement, shall be construed pursuant to and in accordance with California law.

Section 43. **DEFAULT**

- a. Failure or delay by any Party to this Agreement to perform any material term or provision of this Agreement shall constitute a default under this Agreement; provided however, that if the Party who is otherwise claimed to be in default by the other Party commences to cure, correct, or remedy the

alleged default within fifteen (15) days after receipt of written notice specifying such default and shall diligently complete such cure, correction, or remedy, such Party shall not be deemed to be in default hereunder.

b. The Party claiming that a default has occurred shall give written notice of default to the Party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured Party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice, as specified herein.

c. Any failure or delay by a Party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

d. In the event that a default by any Party to this Agreement may remain uncured for more than fifteen (15) days following written notice, as provided above, the injured Party shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings.

Section 44. CUMULATIVE REMEDIES

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default of any other default by the other Party.

Section 45. VENUE

All proceedings involving disputes over the terms, provisions, covenants, or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in San Bernardino County, California.

Section 46. ATTORNEYS' FEES

In the event any action, suit, or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement, or as a result of any alleged breach of any provision of this Agreement, the prevailing Party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, from the losing Party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

Section 47. EFFECTIVENESS OF AGREEMENT

This Agreement shall not be binding upon the City, until signed by the authorized representative(s) of Consultant, approved by the City's Risk Manager, and executed by the authorized City personnel or Mayor.

Section 48. REPRESENTATIONS OF PARTIES AND PERSONS EXECUTING AGREEMENT

(a) Each of the Parties to this Agreement hereby represents that all necessary and appropriate actions of their governing bodies have been taken to make this Agreement a binding obligation of each of the Parties hereto.

(b) The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of and bind the Parties each purports to represent.

Section 49. COUNTERPARTS

This Agreement may be executed by the Parties in counterparts, and when executed by each of the Parties, each counterpart shall be deemed to be a part of this Agreement.

(END OF THIS PAGE)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the dates written below.

THE CITY OF VICTORVILLE

CONSULTANT

By: _____
(INSERT DEPT. HEAD NAME AND TITLE)
(MAYOR NAME AND TITLE IF OVER \$25K)

By: _____
(INSERT NAME & TITLE OF
PERSON SIGNING ON BEHALF,
OF CONSULTANT)

Dated: _____

Dated: _____

ADD ATTEST IF OVER \$25K

THE CITY OF VICTORVILLE

Approved as to Standard Form:

By: _____
Chuck Buquet,
Risk Manager

By: _____
Andre de Bortnowsky,
City Attorney

Dated: _____

Dated: _____